



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL & GAS DOCKET NO. 01-0265500

COMMISSION CALLED HEARING ON THE REQUEST OF PHARAOH OIL & GAS, INC., TO GIVE PHARAOH OIL & GAS, INC., THE OPPORTUNITY TO SHOW CAUSE WHY ALL OF ITS CERTIFICATES OF COMPLIANCE SHOULD NOT BE CANCELLED, THE LEASES SEVERED, AND SEAL ORDERS ISSUED FOR FAILURE OF PHARAOH TO RENEW ITS P-5 ORGANIZATION REPORT

APPEARANCES:

FOR RESPONDENT:

Gary O. Bolen

RESPONDENT:

Pharaoh Oil & Gas, Inc.

FOR INTERVENORS:

Brian Sullivan
Kelli Tieken Kenney
Lee Roberts

INTERVENORS:

Rancho Esperanza, Ltd.
McClure Oil Company

COMMISSION STAFF (OBSERVERS):

Tim Poe
Lowell Williams
Sheila Weigand
Mark England

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:

April 12, 2010

DATE OF NOTICE OF HEARING:

April 26, 2010

DATE OF HEARING:

May 12, 2010

HEARD BY:

James M. Doherty, Hearings Examiner

DATE PFD CIRCULATED:

July 13, 2010

STATEMENT OF THE CASE

On March 30, 2010, the Commission's Assistant Director, Administrative Compliance sent Pharaoh Oil & Gas, Inc. ("Pharaoh"), a "Notice of Intent to Cancel All P-4 Certificates of Compliance and To Sever All Pipeline or Other Carrier Connections and Seal All Gas Wells." This notice advised Pharaoh that all of its P-4 certificates of compliance would be cancelled, all pipeline and other carrier connections for all of Pharaoh's oil leases would be severed, and seal orders would be issued for all of Pharaoh's gas wells unless within 30 days of the notice Pharaoh cured its failure to complete renewal of its P-5 financial assurance packet. On April 12, 2010, Pharaoh filed a request for hearing relating to the subject matter of the March 30, 2010, severance notice.

A hearing was held on May 12, 2010. Pharaoh appeared and presented evidence. Appearances were also made for Rancho Esperanza, Ltd. and McClure Oil Company which hold interests in lands covered by certain of Pharaoh's regulatory leases. These intervenors also presented evidence. Several members of Commission staff, Tim Poe, Sheila Weigand, Lowell Williams, and Mark England, attended the hearing as observers. Mr. Poe and Ms. Weigand presented certain evidence requested by the examiner.

Following the close of the hearing, on June 24, 2010, Pharaoh filed a request for "discontinuance" of the proceeding in this docket.¹ This pleading stated that Pharaoh had completed plugging of all of its wells in the "Crockett Field" (sic) and had submitted all "necessary paperwork" to renew its Form P-5 organization report. The examiner has officially noticed Pharaoh's organization report records which show that Pharaoh's Form P-5 was renewed on June 24, 2010. On July 5, 2010, Rancho Esperanza and McClure filed a reply to Pharaoh's request for dismissal, alleging generally that violations by Pharaoh, other than Form P-5 delinquency, were proved at the hearing which should have precluded renewal of Pharaoh's P-5. Rancho Esperanza believes that Pharaoh's recently renewed Form P-5 should be revoked. For reasons hereinafter discussed, the examiner believes that all issues within the call of the hearing in this docket are now moot, and the proceeding should be dismissed.

BACKGROUND

Pursuant to §91.114(a) of the Texas Natural Resources Code, the Commission may not accept a Form P-5 organization report made under §91.142 of the Code if the organization that submits the report is in violation of a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution. Pursuant to §91.114(b) of the Code, an organization has committed a violation if a final judgment or final administrative order finding the violation has been entered against the organization and all appeals have been exhausted. Pursuant to §91.114(h) of the Code, if the Commission is prohibited under §91.114(a) from accepting an organization's organization report, the Commission, after notice and opportunity for

¹ The examiner has construed this pleading as a motion to dismiss the proceeding.

hearing, by order may revoke any of the organization's certificates of compliance approved under §91.701 of the Code.²

On April 29, 2009, the Commission served a Final Order in Oil & Gas Docket No. 7C-0259788, *Commission Called Hearing Requiring Pharaoh Oil & Gas, Inc. to Show Cause Why the Plugging Extensions for All Wells On the Hoover, A. C. "A" (01281) Lease; Hoover, A. C. -D- (01282) Lease; Hoover, A. C. -E- (01283) Lease; Hoover, A. C. -B- (02286) Lease; Hoover, A. C. (07091) Lease; and Hoover "A" (07447) Lease, Shannon (San Andres) Field, Crockett County, Texas Should Not Be Cancelled and Pharaoh Oil & Gas, Inc. Should Not Be Ordered to Immediately Plug the Wells*. This order became administratively final on June 18, 2009, when a motion for rehearing was denied. The order required Pharaoh, within 30 days, to plug the Hoover, A. C. (01281) Lease, Well Nos. 2, 3, 4, and 6, the Hoover, A. C. -E- (01283) Lease, Well Nos. 2, 5, 6, 7, and 8, the Hoover, A. C. -B- (02286) Lease, Well Nos. 1, 2, 3, 5, 6, and 7, the Hoover, A. C. (07091) Lease, Well Nos. 1 through 12, and the Hoover "A" (07447) Lease, Well No. 1.

The examiner has officially noticed the Commission's P-5 Master Inquiry database as of the date of the hearing in this docket which showed that Pharaoh's Form P-5 organization report was due for renewal on February 1, 2010 and was delinquent. As of the date of the hearing, Pharaoh's P-5 organization report record was subject to a so-called SB 639 flag, because Pharaoh had not achieved full compliance with the Commission's Final Order in Oil & Gas Docket No. 7C-0259788.³ Thus, as of February 1, 2010, and the date of the hearing in this docket, the Commission was prohibited by §91.114(a) of the Texas Natural Resources Code from allowing Pharaoh to renew its P-5 organization report.

Testimony elicited by the examiner from Commission staff at the hearing indicated that as of the day before the hearing, Pharaoh had installed bottom plugs in all but one of the 28 wells Pharaoh had been ordered to plug in Oil & Gas Docket No. 7C-0259788. Eight of the 28 wells had been completely plugged with Forms W-3 (Plugging Record) on file. A total of 6 wells needed surface plugs only.

² For additional authority to suspend or revoke or suspend certificates of compliance for failure to maintain on file with the Commission an organization report and financial assurance or for other violations of Commission rules or orders, see §91.124(f)(2) and §91.704 of the Texas Natural Resources Code and Statewide Rule 73(d).

³ The examiner has officially noticed the Commission's SB 639/SB 814 Non-Compliance Dockets for Requested Organization database, as of the date of the hearing in this docket, which showed that the SB 639 flag on Pharaoh's organization report record was based on non-compliance with Commission final orders in Oil & Gas Docket Nos. 7C-0259788 and 7C-0259789. Oil & Gas Docket No. 7C-0259789 should have been deleted from this database as of the date of the hearing. The examiner has officially noticed the Plugging Data database for the two wells ordered to be plugged in Oil & Gas Docket No. 7C-0259789 which shows that these wells were plugged on February 23, 2010, leaving Oil & Gas Docket No. 7C-0259788 as the only basis for the SB 639 flag.

Staff testimony also indicated that when an operator's Form P-5 organization report becomes 30 days delinquent, a notice of intent to sever the operator's highest producing lease is issued. When a Form P-5 organization report becomes 60 days delinquent, a notice of intent to sever all of the operator's leases is issued. These notices of intent provide the operator 30 days in which to cure the Form P-5 delinquency, failing in which severance notices are issued, subject to the right of the operator to request a hearing. A SB 639 flag is placed on an operator's P-5 organization report record, prohibiting P-5 renewal, when an administratively final Commission order has been issued finding a violation of Commission rules, and the order is no longer subject to appeal.⁴

Pursuant to §91.114(d), the Commission is to accept an organization report from an organization formerly subject to the prohibition of §91.114(a) of the Code if, as pertinent here, the conditions that constituted the violation are corrected. The examiner has officially noticed Forms W-3 (Plugging Record) on file with the Commission which show that as of at least June 14, 2010, Pharaoh had completed plugging of all 28 wells it was ordered to plug in Oil & Gas Docket No. 7C-0259788 and had filed Forms W-3 for all such wells which were accepted by the Commission. The examiner has further officially noticed Pharaoh's organization report records which show that as of June 24, 2010, the SB 639 flag was removed from Pharaoh's organization report record, renewal of Pharaoh's P-5 organization report was approved, and Pharaoh now has approved financial assurance on file in the amount of \$250,000.

DISCUSSION OF THE EVIDENCE

Pharaoh

According to Gary O. Bolen, by the date of the hearing, Pharaoh had made significant progress toward completion of plugging the 28 wells Pharaoh was ordered to plug in Oil & Gas Docket No. 7C-0259788. Pharaoh had three plugging rigs working on the wells and was trying to come into compliance. Bolen conceded that Pharaoh had not plugged the wells within 30 days of the time when the order in Oil & Gas Docket No. 7C-0259788 became administratively final and that Forms W-3A (Notice of Intention to Plug and Abandon) for the wells were not filed until February 2010. According to Bolen, part of the delay in plugging the wells may have been due to his own stubbornness. Bolen believed that the wells would make 15-20 barrels of oil per day and there was no good reason to plug them. Initially, he thought he might be able to successfully supercede the Commission's plug order, but ruled this out when he learned that he would not be permitted to continue as the operator of the wells. According to Bolen, Pharaoh did not commence to plug the wells in the Fall of 2009 because the Rancho Esperanza property is a hunting preserve and plugging operations at that time would have interfered with deer hunting on the ranch. Bolen now realizes

⁴ The SB 639 flag is a code that indicates the operator is subject to the restrictions of §91.114(a) of the Texas Natural Resources Code. The examiner has officially noticed that it is Commission practice to remove the SB 639 flag when the operator has achieved compliance with the Commission order that resulted in the placing of the flag.

that it would have been better to plug the wells at an earlier date, but he saw no big rush since the wells did not present a risk of harm to anyone.

Bolen says that Pharaoh's problems on the Rancho Esperanza property started when the Commission required Pharaoh to remediate two old pits on the property that had been left there for more than 30 years by a previous operator. Pharaoh has had a series of disagreements with the owners of the ranch property as to how Pharaoh should conduct its business. However, Bolen says the old pits have been remediated, and Pharaoh has hauled 62 loads of junk off the ranch that Pharaoh did not put there. Bolen believes the ranch is ten times cleaner than it was when Pharaoh arrived there. At the time of the hearing, Bolen projected that Pharaoh would complete plugging of all wells involved in Oil & Gas Docket No. 7C-0259788 by about June 1, 2010. Bolen believes that refusal to renew Pharaoh's P-5 organization report, collection of Pharaoh's financial assurance, and the threat to cancel all of Pharaoh's certificates of compliance is out of proportion to Pharaoh's delay in plugging wells on the Rancho Esperanza property.

Rancho Esperanza/McClure

Rancho Esperanza, Ltd. and McClure Oil Company did not present any testimony at the hearing, but did present certain exhibits, including the transcript, proposal for decision, final order, and order denying motion for rehearing in Oil & Gas Docket No. 7C-0259788.

Other documents presented by Rancho Esperanza and McClure included documents pertaining to threatened severances of Pharaoh leases, collection by the Commission of Pharaoh's financial assurance, plugging records for wells ordered to be plugged in Oil & Gas Docket No. 7C-0259788, records of prior enforcement dockets against Gary O. Bolen or companies with which he has been associated, a summary of leases allegedly produced against severance by Pharaoh, a court order and writ of injunction relating to storage of equipment by Pharaoh on Rancho Esperanza property, a Commission final order in Oil & Gas Docket No. 7C-0259789 wherein Pharaoh was ordered to plug two wells in Upton County and related records to show when the wells were plugged, copies of San Angelo District Office correspondence to Pharaoh dated in August and September 2009 relating to alleged violations found on certain leases on the Rancho Esperanza property, and copies of Rancho Esperanza correspondence dated in February and May 2010, to the San Angelo District Office complaining of alleged spill incidents by Pharaoh on Rancho Esperanza property.

EXAMINER'S OPINION

This hearing was called at the request of Pharaoh to provide Pharaoh with an opportunity to show cause why all of the certificates of compliance issued for Pharaoh's leases and wells should not be cancelled, and why all of Pharaoh's oil leases should not be severed and seal orders issued for all Pharaoh gas wells *for failure of Pharaoh to renew its P-5 organization report*. No other issue is within the scope of the notice of the hearing. Pharaoh's P-5 organization report was renewed on June 24, 2010, with Commission approval.

In its reply to Pharaoh's motion to dismiss, Rancho Esperanza argues that the proceeding should not be dismissed because violations by Pharaoh were proved at the hearing that should have precluded the June 24, 2010, renewal of Pharaoh's P-5 organization report. Although Rancho Esperanza notes that Pharaoh did not *timely* comply with the Commission's Final Order in Oil & Gas Docket No. 7C-0259788 and says generally that evidence was presented at the hearing of other alleged violations of Commission rules by Pharaoh, Rancho Esperanza's primary position is that Pharaoh's recently renewed P-5 should be revoked because Pharaoh was shown to have reported production or injection against severance on four of Pharaoh's leases. Rancho Esperanza says that pursuant to §91.706(b) of the Texas Natural Resources Code and Statewide Rule 1(g), where an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission *may* refuse to renew the operator's P-5 until the operator pays the reconnect fee and the Commission re-issues the certificate of compliance for that well.

While Section 91.706(b) of the Texas Natural Resources Code and Statewide Rule 1(g) give the Commission discretion to refuse to renew an operator's Form P-5 organization report without payment of the applicable reconnect fees where the operator has used or reported use of a well against severance, they do not authorize *revocation* of a Form P-5 organization report for this reason. More importantly, the call of the hearing in this docket, as set forth in the Notice of Hearing issued on April 26, 2010, did not include consideration of whether Pharaoh's Form P-5 organization report should be revoked based on reports of production, injection, or disposal against severance. If the Enforcement Section wishes to pursue Pharaoh for violations of Statewide Rule 73 and §91.706(a) relating to production, injection, or disposal against severance, it may do so in a separate enforcement docket after issuance of proper notice and opportunity for hearing.⁵

The reason stated by the Commission's P-5/Financial Assurance Unit for refusal to renew Pharaoh's P-5 organization report when due on February 1, 2010, was the SB 639 flag caused by Pharaoh's failure to complete compliance with the Commission's Final Order in Oil & Gas Docket No. 7C-0259788. The examiner has officially noticed that as of June 14, 2010, Pharaoh had completed plugging of all 28 wells it was ordered to plug in Oil & Gas Docket No. 7C-0259788, and had filed Forms W-3 for all of these wells which had been accepted by the Commission. The examiner has also officially noticed that on June 24, 2010, Pharaoh's P-5 organization report was

⁵ Production, injection, or disposal against severance is not to be condoned, but whether Pharaoh's P-5 should be revoked for this reason is simply not an issue in this particular case. If the Commission had declined to renew Pharaoh's P-5 on the basis that Pharaoh had reported production, injection, or disposal for four severed leases and had not paid the applicable reconnect fees, which the Commission did not do, Pharaoh could have resolved the matter simply by paying \$2,400 in reconnect fees and filing a H-10 (Annual Injection Well Monitoring Report) for the Hughes, Ed S. (00959) Lease in District 08. The examiner has officially noticed the P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry database for the four leases referenced by Rancho Esperanza, which show that all but one of the violations that caused the severances were resolved by the operator. The one exception was a December 5, 2003, severance of the Hughes, Ed S. (00959) Lease in District 08 for a delinquent H-10 (Annual Injection Well Monitoring Report).

renewed with Commission approval. The Commission had discretion and authority to renew this organization report pursuant to §91.114(d) of the Texas Natural Resources Code which provides that the Commission is to accept an organization report from an organization formerly subject to the prohibition of §91.114(a) of the Code if, as pertinent here, the conditions that constituted the violation are corrected. Pharaoh's P-5 organization report is now active and Pharaoh has the required amount of approved financial assurance on file. Delinquency of Pharaoh's P-5 organization report no longer exists as a reason to cancel Pharaoh's certificates of compliance or to sever or seal Pharaoh's leases or wells. Because the Commission currently cannot cancel Pharaoh's certificates of compliance or sever or seal Pharaoh's leases or wells for P-5 delinquency, all issues in this proceeding are now moot, and the proceeding should be dismissed.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At least ten (10) days notice of this hearing was provided to all interested persons. Pharaoh Oil & Gas, Inc. ("Pharaoh"), Rancho Esperanza, Ltd. ("Rancho Esperanza"), and McClure Oil Company ("McClure") appeared at the hearing and presented evidence.
2. On April 29, 2009, the Commission served a Final Order in Oil & Gas Docket No. 7C-0259788. This order became administratively final on June 18, 2009, when a motion for rehearing was denied. The order required Pharaoh, within 30 days, to plug the Hoover, A. C. (01281) Lease, Well Nos. 2, 3, 4, and 6, the Hoover, A. C. -E- (01283) Lease, Well Nos. 2, 5, 6, 7, and 8, the Hoover, A. C. -B- (02286) Lease, Well Nos. 1, 2, 3, 5, 6, and 7, the Hoover, A. C. (07091) Lease, Well Nos. 1 through 12, and the Hoover "A" (07447) Lease, Well No. 1, all in the Shannon (San Andres) Field, Crockett County, Texas.
3. Pursuant to §91.114(a) of the Texas Natural Resources Code, the Commission may not accept a Form P-5 organization report made under §91.142 of the Code if the organization that submits the report is in violation of a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution.
4. Pharaoh's Form P-5 organization report was due to be renewed on February 1, 2010.
5. As of February 1, 2010, Pharaoh had not completed compliance with the Commission's Final Order served April 29, 2009, in Oil & Gas Docket No. 7C-0259788. As a result, under §91.114(a) of the Texas Natural Resources Code, the Commission was prohibited from accepting renewal of Pharaoh's Form P-5 organization report on February 1, 2010.

6. As of May 12, 2010, the date of the hearing in this docket, Pharaoh's Form P-5 organization report had been delinquent since February 1, 2010.
7. Pursuant to §91.114(h) of the Texas Natural Resources Code, if the Commission is prohibited under §91.114(a) from accepting an organization's organization report, the Commission, after notice and opportunity for hearing, by order may revoke any of the organization's certificates of compliance approved under §91.701 of the Code.
8. On March 30, 2010, the Commission's Assistant Director, Administrative Compliance sent Pharaoh a "Notice of Intent to Cancel All P-4 Certificates of Compliance and To Sever All Pipeline or Other Carrier Connections and Seal All Gas Wells" ("severance notice"). This notice advised Pharaoh that all of its P-4 certificates of compliance would be cancelled, all pipeline and other carrier connections for all of Pharaoh's oil leases would be severed, and seal orders would be issued for all of Pharaoh's gas wells unless within 30 days of the notice Pharaoh cured its failure to complete renewal of its P-5 financial assurance packet.
9. On April 12, 2010, Pharaoh filed a request for hearing relating to the subject matter of the Commission's March 30, 2010, severance notice.
10. By Notice of Hearing served April 26, 2010, the Commission called the hearing in this docket to provide Pharaoh with an opportunity to show cause why all of the certificates of compliance issued for Pharaoh's leases and wells should not be cancelled, and why all of Pharaoh's oil leases should not be severed and seal orders issued for all Pharaoh gas wells for failure of Pharaoh to renew its P-5 organization report.
11. As of at least June 14, 2010, Pharaoh completed plugging of all 28 wells it was ordered to plug in Oil & Gas Docket No. 7C-0259788 and filed Forms W-3 (Plugging Record) for all such wells which were accepted by the Commission.
12. Pursuant to §91.114(d) of the Texas Natural Resources Code, the Commission is to accept an organization report from an organization formerly subject to the prohibition of §91.114(a) of the Code if the conditions that constituted the violation are corrected.
13. As of June 24, 2010, renewal of Pharaoh's P-5 organization report was approved by the Commission. The Pharaoh P-5 organization report is now active, and Pharaoh now has approved financial assurance on file in the amount of \$250,000.
14. The reason stated in the Commission's March 30, 2010, severance notice for cancellation of Pharaoh's certificates of compliance, severance of Pharaoh's oil leases, and issuance of seal orders against Pharaoh's gas wells, i.e., failure of Pharaoh to complete renewal of its P-5 financial assurance packet, did not continue to exist on and after June 24, 2010, when the Commission approved renewal of Pharaoh's P-5 organization report.

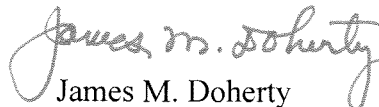
CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. The only issue in this docket is whether Pharaoh Oil & Gas, Inc., has shown cause why all of its certificates of compliance should not be cancelled, its leases severed, and seal orders issued for failure of Pharaoh to renew its P-5 organization report.
4. The Commission's March 30, 2010, "Notice of Intent to Cancel All P-4 Certificates of Compliance and To Sever All Pipeline or Other Carrier Connections and Seal All Gas Wells" issued to Pharaoh Oil & Gas, Inc., was rendered ineffective by the Commission's approval of renewal of Pharaoh's P-5 organization report on June 24, 2010.
5. The Commission currently may not cancel all P-4 certificates of compliance issued to Pharaoh Oil & Gas, Inc., sever all pipeline or other carrier connections for Pharaoh's oil leases, or issue seal orders for all of Pharaoh's gas wells for failure of Pharaoh to complete renewal of its P-5 financial assurance packet because the Commission approved renewal of Pharaoh's P-5 financial assurance packet on June 24, 2010.
6. All issues in this docket are moot, and this proceeding should be dismissed.

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order dismissing this proceeding.

Respectfully submitted,


James M. Doherty
Hearings Examiner